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Direct Action: A Threat to Democracy?

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About the author

Michael Randle was a member of the organisations which pioneered nonviolent direct action in Britain against preparations for nuclear war in the 1950s and 1960s. He was a member of the Aldermaston March Committee which organised the first march from London to the Atomic Weapons Research Establishment at Aldermaston during Easter 1958, and first adopted the now ubiquitous nuclear disarmament symbol designed by the artist Gerald Holtom. Chair of the Direct Action Committee against Nuclear War (1958-61), and Secretary of the Committee of 100 (1960-61), he served 12 months of an 18 month sentence in Wormwood Scrubs in 1962-3 for his part in organising an attempted occupation of Wethersfield USAF Airbase, and a further 8 months in prison in 1967-8 for participating in an occupation of the Greek Embassy in London following the Colonels' Coup in Greece.

In 1966 he assisted in the escape from Wormwood Scrubs of the double agent, George Blake, serving a 42 year sentence, and smuggled him to safety in East Germany. In 1991 he and fellow disarmament campaigner, Pat Pottle, stood trial for their part in the escape. They conducted their own defence, arguing that although they did not approve of Blake's espionage activities, the 42 year sentence he received was inhuman. Despite a virtual direction from the judge to convict, the jury acquitted them on all counts.

Michael Randle served on the Council of War Resisters International from 1960 to 1987 and as its Chair from 1966 to 1973. He co-ordinated the Bradford-based Alternative Defence Commission from 1980 to 1988 which published two major reports in 1983 and 1987. His publications include *People Power: the building of a new European Home*, Hawthorn Press, 1990, *Civil Resistance*, Paladin, 1994, *How to Defend Yourself in Court*, Civil Liberties Trust, 1995, and (as editor and contributor) *Challenge to Nonviolence*, Bradford University, 2002. He is an Honorary Research Fellow in the Department of Peace Studies at Bradford University.

Introduction

The case against us - advocates and practitioners of direct action and civil disobedience - is straightforward. First when we defy duly enacted laws, or engage in obstructive or coercive tactics against those acting within the law we are being undemocratic. Second, we are guilty of special pleading. We claim for ourselves as ecologists, peace or animal rights activists, rights we deny our political opponents, from anti-abortionists to the national front. Alternatively if we do concede that they have the same rights as ourselves to take obstructive direct action in support of their convictions we open up the prospect of public issues being decided by shows of strength in the streets. Either way democracy suffers.

These and other criticisms were made, and keenly debated, in the late 1950s and 1960s when the Direct Action Committee Against Nuclear War, and subsequently the Committee of 100, pioneered Gandhian-style civil disobedience in this country, and when the Civil Rights, Anti-nuclear, and Anti-Vietnam war movements took to the streets in the US. Nor were the criticisms confined to the political right. In the early days of the anti-nuclear weapons campaign in Britain they were voiced also by many inside the movement, including the leadership of CND, who argued that only lawful, persuasive, methods of campaigning were legitimate, or had any hope of success.

In the 1970s, the baton of direct action was taken up chiefly by the movement against nuclear power, organising protests at sites such as Torness on a scale never achieved by the Committee of 100 outside city centres. By the early 1980s when the anti-Bomb campaign experienced its dramatic revival, nonviolent direct action had become much more widely accepted as part of the culture and politics of the country. Yet the accusation that it was undemocratic continued to be made, notably by the then defence Minister Michael Heseltine when he descended like Tarzan in battledress to oversee the expulsion of members of the peace camp at Molesworth base in February 1985. In the late 1990s and into the new century, it has been levelled at ecological, anti-capitalist, animal rights and peace protesters as direct action has again been adopted for these various causes. The international anti-capitalist protests in Seattle in 1999, Prague in 2000 and Genoa in 2001 have been on a scale not witnessed since the mass peace protests of the early 1980s, and prior to that, the anti-Vietnam war demonstrations of the late 1960s, early 1970s.

I will argue here that care does have to be taken in deciding when and where to engage in civil disobedience.¹ Nonetheless civil disobedience should not be ruled out in any society, however democratic. Indeed blind obedience to the law would be even more irresponsible and dangerous than disregarding it at will.

First, a clarification of terms.

- *Direct action* has been succinctly defined as any action where individuals or groups act directly themselves to try to bring about change rather than asking or expecting others to act on their behalf.² Squatting by homeless people is a piece of direct action; lobbying the government or local authority to provide adequate housing is not. (Generally, of course, the two approaches go hand in hand). Direct action does not necessarily involve breaking the law - the citizens' boycott of South African goods for instance was entirely legal. In this chapter, however, I am concerned with those forms of direct action which, although nonviolent, do involve breaches of the law, such as blockades, occupations, tax-refusal, or coercive tactics such as political strikes - which in any case are legally prohibited in Britain.
- *Civil disobedience* - is the principled, open and nonviolent defiance of the law for political ends. The overlap with obstructive forms of direct action is considerable, though sometimes the latter involves clandestine breaches of the law rather than open public defiance and therefore fails outside the above definition. However, for the purposes of the present discussion I use the terms 'direct action' and 'civil disobedience' pretty much interchangeably since my chief concern is whether conscientious breaches of the law, or nonviolent obstruction, are justified in a democratic context.

The 'civil' part of civil disobedience refers to the fact that it is action by civil society and that it is conducted 'civilly', that is to say without resort to violence. Some writers on the subject argue that public defiance of the law which is aimed at revolutionary change should be excluded from the definition of civil disobedience.³ This, in my view, risks excludes too much, not least Gandhi's 'civil disobedience' campaigns with the revolutionary aim of ending British rule in India. John Rawls, the eminent American theorist of liberal constitutionalism, draws a distinction between civil disobedience, which he sees as essentially a form of appeal to the public on the basis of shared values, and 'militant action and obstruction'. The militant, he argues, 'is much more deeply opposed to the existing political system' and 'seeks by well-framed militant acts of disruption and resistance, and the like to attack the prevalent view of justice or to force a movement in the desired direction.'⁴

However, obstruction, often symbolic in character, is frequently an element in nonviolent direct action campaigns. There are, it is true, self-proclaimed revolutionary groups who reject - in their rhetoric at least - the whole notion of democracy and for whom defiance of the law is simply a tactic for undermining existing structures with a view to their eventual overthrow - usually by violent means. On the other hand there are also anarcho-pacifists in the Gandhian tradition, 'eco-anarchists' and others who reject the existing political system not because they repudiate democratic values but because they regard the system as not nearly democratic enough. Frequently their disobedience/direct action goes hand in hand with a constructive effort to live an alternative life-style and build alternative communities based on the principle of direct democracy. While such groups are on the margins of mainstream society they have frequently been at the forefront of direct action campaigns and therefore cannot be ignored in this kind of discussion. Despite their quasi-revolutionary goals, their acts of civil disobedience and nonviolent direct action are to a great extent an appeal to shared values which they suggest are not sufficiently realised within the current political system or by many current policies.

It is useful to distinguish ‘defensive’ civil disobedience where people defy bans and prohibitions that restrict their freedom to speak and act (press censorship laws for example), or where individuals resist at the point where the state makes a demand upon them they find intolerable (conscientious refusal to comply with military conscription or pay the poll tax), and campaigns where the protesters take the ‘offensive’ and act together to obstruct activities by others who may be implementing decisions by the national or local authorities or acting in a private capacity but within the law - the military, the arms manufacturers, the road builders.

This distinction broadly, though not exactly, parallels one drawn between ‘direct’ civil disobedience where the laws being defied are considered oppressive in themselves, and ‘indirect’ civil disobedience which involves breaking laws which are benign or morally neutral, laws for instance against obstructing the highway which may be breached in sit-downs outside military bases and other actions. Individual refusal to comply with a law on grounds of conscience constitutes the sub-category of civil disobedience - or at any rate conscientious law-breaking⁵ - most widely accepted within the political culture of Western democracies. Interestingly, however, it too can be coercive in the negative sense that if enough people refuse to comply with the law it becomes inoperable.

Dangers of Direct Action

Before considering how direct action/civil disobedience can threaten constitutional democracy, I would like to deal briefly with the objection that the indirect democracy of the Western capitalist model is no democracy at all and that therefore the question of whether or not direct action would be compatible with a genuinely democratic system is of no immediate concern. The anarchist or quasi-anarchist tendency, noted above, amongst some practitioners of direct action in Britain and other countries makes it necessary to consider this question.

I share the view that Western capitalist democracy falls far short of the ideal. There is nothing like equality in the power relations between individuals, groups and classes, or the kind of active participation and control by the citizens envisaged by democratic theorists and realised briefly at various revolutionary moments since at least the American revolution in the form of councils or soviets.⁶ Moreover, the system of parliamentary government has itself been eroded in Britain and other Western states over recent decades, with the executive wielding increasing power and the elected legislatures tending to be reduced to the role of rubber stamping executive decisions. There is a tendency too for electorates to be regarded by governments and mainstream parties as objects to be manipulated, especially by means of the mass media, rather than subjects taking an active role in the running of their lives. In Britain democratic practice has been further eroded over the past few decades by the increasing reliance on quangos in place of elected bodies. Democracy, too, is still

almost entirely absent from the workplace. Meanwhile the growth of transnational corporations limits the power of all national governments.

For all that, few, I think, would dispute that representative democracy, however imperfect, is incomparably better than dictatorship. It can hardly be necessary to argue this at the end of century in which dictatorial governments and totalitarian states have wrought so much havoc both to their own people and to the rest of the world. The rule of law does provide safeguards against lynch law on the one hand and arbitrary arrest, imprisonment, and death at the whim of the executive power on the other. Similarly the right to form political parties and to vote in elections is an important safeguard against arbitrary rule. In short, the advent of representative democracy, whatever its shortcomings, marked an advance on what preceded it, and indeed was usually established through long struggles and direct action from below.

For this reason, the question of whether direct action/civil disobedience, or particular direct action campaigns, could take society back to arbitrary rule rather than forward to active citizen participation is a crucial one - crucial even for the most committed anarchist. The contention here is that direct action can indeed contribute to a more vibrant, participative democracy and act as a counterbalance to the vested interests which can largely void democratic systems of substance. However, if it is to fulfil this role it must be engaged in with care and with an awareness of the dangers.

What then are the threats that direct action can pose to constitutional democracies? At the most serious end, it can bring about the collapse of constitutional government altogether, especially where democratic structures and traditions are weak. In 1963, the elected left-wing government of Cheddi Jagan in Guyana was overthrown by a general strike which turned out to have had financial and organisational backing from the CIA. In Chile too, in 1973, the coup which overthrew the elected Marxist government of Allende and brought the military dictator Pinochet to power was preceded by a political strike of transport workers and widespread civil unrest. Of course there was nothing nonviolent about Pinochet's seizure of power itself - the bombing of the capital, the murder of Allende, the rounding up and massacring of hundreds of civilians in Santiago's sports stadium. But the point is that the campaign of strikes and obstruction weakened the government and opened up the way for the coup.

In the British context, or in the context of well-established representative democracies of Western Europe, North America and other countries the overthrow of the parliamentary system as a result of nonviolent direct action at the grassroots is not a real danger in the foreseeable future. (Elsewhere, however, for instance in some of the fledgling parliamentary systems in East Central or Eastern Europe, the successor states of the Soviet Union, or in parts of the so-called Third World, the threat

cannot be lightly dismissed.) The more immediate threat in this country and countries like it is that if direct action and civil disobedience becomes widespread - however well justified by the circumstances - the state will respond by assuming increasingly arbitrary powers. Traditional liberties, such as the rights of assembly, may be curtailed and little by little the whole political culture changed for the worse.

To some extent that has already happened - witness the passing of the Criminal Justice and Public Order Act by the Conservative government in 1994, which was in part a response to increased direct action by protest groups. The Prevention of Terrorism Act which came into force under a Labour government in February 2001, appears also to have been aimed in part at increasing police powers to deal with protest groups engaging in direct action. It broadened the definition of terrorism to include any destruction of property, so that protesters who destroyed GM crops in a conscientious protest, or anti-nuclear campaigners who damage weapons of mass destruction could also be charged under the Act, and would then have fewer rights than a person involved in deliberate assault and robbery. Nor could one rule out entirely the possibility that a future British government would assume emergency powers if civil unrest became sufficiently widespread - as Mrs Indira Gandhi did in India in 1975 in response to the civil resistance campaign against corruption led by Jayprakash Narayan (JP). In that instance, however, the campaign won the political and moral argument in the country and the repression backfired on Mrs Gandhi who was defeated at the polls at the next election. This is an illustration of the fact that it is always the wider struggle for public support that is crucial - a point I return to later.

Another risk is that the opponents of the peace and ecological movements will respond to direct action with direct action of their own - and will be far less scrupulous about keeping it nonviolent. In the US the anti-abortion lobby has been responsible for intimidation, assault and even murder in its attempts to close down abortion clinics. The risk of provoking a violent response increases where the direct actionists in the ecology or peace movements themselves move away from adherence to a nonviolent strategy and engage in such things as trashing, sabotage, or fighting pitched battles with security guards or the police as has happened at some of the anti-globalisation demonstrations.

Finally, there is the danger of the widespread and casual use of direct action and civil disobedience leading to a general disregard for the law. Again some may say that that would be no bad thing. But classic anarchist theory recognises that the individual's right to freedom of action is constrained by the need to take account of the fact that others have the same rights. In small, face-to-face communities the rights of individuals and groups, and therefore the limits on freedom of action, can be negotiated directly. But they do have to be negotiated; even members of anarchist communes have to establish certain ground rules for the society to function. In atomised modern societies the law serves in part

this genuine and necessary function - though, of course, it also serves to protect and preserve a status quo marked by vast inequalities of wealth and power. However, elected legislatures, and the requirement that government parties must submit themselves for re-election at regular intervals, provide some safeguards that the public good will not be entirely disregarded.

Assuming then that a general disregard for the law would be undesirable, even disastrous, how great is the risk that the use of direct action and civil disobedience, even for worthy causes, would lead to this result? The answer is that this depends in large measure on the discrimination with which it is resorted to and the discipline and self-imposed limits that direct actionists are prepared to accept. The starting point for direct actionists as for other citizens ought surely to be respect for the law and a willingness to obey it unless and until there are very strong reasons indeed for defying it. Only on such a basis can a pluralist society function. Moreover a respect in general for the law adds to the impact of civil disobedience when it does take place.

Opponents of civil disobedience object that this still implies that the individual has the right to decide whether or not to obey any given law. This is true. But this is not only the right of every citizen but their duty, for otherwise they might find themselves participating, or acquiescing in the most monstrous crimes. Just as the Nuremberg judgement imposes on every soldier the duty of disobeying unjust orders - which implies making a judgement on the orders received, despite the general presumption that orders should be obeyed - so the very notion of responsible citizenship imposes on every individual the obligation to consider whether they can in good conscience conform to particular laws. As John Rawls insists 'this is true of any theory of political duty and obligation, at least of any theory compatible with principles of a democratic constitution.'⁷ This not the same as saying that everyone is free to obey the law or not simply as they please. It means that against a background presumption that the law should be obeyed, they have the right, on the basis of reasoned argument and moral principles, to decide to disobey. Whether or not they are right to do so in any given instance, in some more objective sense, will be a matter of debate within the society and will sometimes remain an open question unless and until history in some sense arrives at a settled judgement.

This bears directly on the charge made by critics that peace, ecological and similar leftist and green campaigners who engage in direct action are guilty of special pleading. This accusation holds only if such campaigners deny the principle that others have the same rights as themselves. It is crucial that they should not do so. However, just as critics are entitled to reach the conclusion that a particular campaign of direct action and civil disobedience by peace or ecological activists is not justified, so the latter are entitled to reach that same conclusion about campaigns for various other causes.

Finally, the disincentives in Britain as in most modern states to openly defying the law are sufficiently strong to deter most people from even considering doing so except possibly in the most extreme circumstances. For this reason the risk of nonviolent civil disobedience by committed individuals and movements leading to a widespread disregard of the law by the majority of citizens should not be overstated.

Constitutional Issues

This discussion leads on to a broader consideration of the meaning and implications of democracy. If it is simply taken to mean rule by the majority with literally no constraints then it can degenerate into another form of tyranny. In fact the cornerstone and first principle of any genuine liberal democracy has to be respect for the fundamental rights of all citizens - right of assembly and free expression, freedom from arbitrary arrest, discrimination and persecution. Only if majority rule operates within such constraints can it be regarded as democratic in any worthwhile sense or command the allegiance of thinking people. Indeed the very principle of majority rule can be seen as deriving from the notion that individuals have certain inalienable rights. These include the right of self government, circumscribed only by the obligation to respect this right on the part of others. It is clear too that if the rights of all citizens are not respected, majority rule itself will sooner or later disappear. The constitution of many democratic states, notably that of the USA, explicitly recognises this dual character of liberal democracy and, in principle at least, prohibits legislation or policies which infringe the fundamental rights of citizens.

The implication of this is that some laws and policies are inherently undemocratic, no matter how many people within a particular country - or 'polity' - may support them.⁸ The further implication is that people defying laws or taking nonviolent direct action to obstruct such policies while they may be breaking the law as it stands and obstructing the will of the majority, or of an elected government, are acting in defence of the more fundamental democratic principle.⁹ The point applies most clearly to 'defensive' civil disobedience where individuals or groups refuse to cooperate with a patently unjust law.

To take an extreme example, the persecution or forcible repatriation of an ethnic group within a society would be undemocratic even if a government had a massive popular mandate to carry it out. People obstructing the implementation of that policy through direct action could rightly claim to be upholding democratic principles. They would still have to consider whether direct action was the best strategy to adopt, but that is a separate issue. Their democratic right to do so in that situation is incontrovertible. Those directly discriminated against in such a situation have a still stronger case for refusing to cooperate in any way with such oppressive laws.

If that example seems far-fetched, we can take the historical example of the Civil Rights movement in the United States which aimed at bringing to an end discrimination against a large, though still minority, ethnic group, and used a mixture of nonviolent direct action, orthodox campaigning, and action through the courts to bring about changes to laws and policies. Few would now dispute that the US Civil Rights movement was justified in its goals and campaigning methods despite the fact that the US is widely regarded as one of the most advanced democracies. (And with some justification. It is certainly a closer approximation to the democratic ideal than the British system where residual royal prerogative powers rest with government ministers and people have the status of subjects rather than citizens). Fewer still would deny the individual right of Rosa Parks in Montgomery Alabama in 1955 to defy the state law requiring her to vacate a seat reserved for whites only and sit at the back of bus.

In their day Martin Luther King and the other civil rights activists were accused of being undemocratic when they resorted to obstructive direct action and various forms of civil disobedience.¹⁰ In fact the campaign helped to remove, partially at least, a glaring contradiction in US society, a contradiction which would either be resolved or in time would undermine the whole democratic framework. In one sense, what Luther King and the other civil rights activists were doing was to uphold the liberal principle in the concept of liberal democracy against the wishes of racist white majorities and political institutions, particularly in the southern states.

The constitution, and the federal structure of the US system, enabled protesters to take action in the courts as well as the streets, or, in some instances to take to the streets to ensure that court rulings were enforced. Thus the Congress of Racial Equality's (CORE) 'Journey of Reconciliation' made by direct actionists on interstate buses in 1947 was in a sense an attempt to enforce through nonviolent direct action a Supreme Court decision the previous year outlawing segregation on interstate travel. This did not prevent the authorities in North Carolina, acting in accordance with State's law, from arresting some of the participants, or the local court from sentencing them to terms of imprisonment and work on segregated chain gangs for periods ranging from 30 to 60 days. It did, however, add to the authority and political impact of the protests. The Freedom Bus Rides of the early 1960s, also organised by CORE, were similarly undertaken to insist nonviolently on the implementation of a later Supreme Court Ruling extending the ban on segregation on interstate travel to station rest rooms, waiting rooms and lunch rooms. In the case of the Montgomery Bus Boycott of 1955-56, direct action was again accompanied by action in the courts and resulted after nine months in another Supreme Court ruling that intrastate bus segregation was unconstitutional.

These cases raise an interesting question as to whether the protesters could be said to be disobeying the law at all - and thus whether their actions should be regarded as civil disobedience. But while it is

true that the State's laws themselves violated the constitution, and were subsequently judged to be unconstitutional, the protesters were still openly defying laws currently operating within that immediate jurisdiction. In determining whether an act of civil disobedience has or has not occurred, this immediate framework of law is, I think, the one that must first be taken into account.¹¹ The civil rights protesters were engaging in civil disobedience, though civil disobedience which was clearly justified morally, and was subsequently vindicated by the higher court.

April Carter discusses this issue in her classic study, *Direct Action and Liberal Democracy*:

Because civil rights demonstrations could claim either the immediate blessing of constitutional legality, or after being fought through the courts could be proved to be legal, or could retrospectively claim authority from subsequent Congressional legislation, it is possible to argue that these demonstrations were not really forms of civil disobedience at all, but an assertion of legal rights. However, the constitutionality of direct action is not always so easily settled. If the Supreme Court had ruled against a case involving peaceful assembly in defiance of local prohibition, or if Congress had failed to legislate in favour of integration of restaurants, the demonstrators would still maintain that their acts though formally illegal were in the spirit of the constitution.¹²

She concludes that an appeal to constitutional rights is less a matter of strict legality than an appeal to the spirit of the constitution. It is always in part, she argues, a rhetorical and political device, though 'its effectiveness is greatly enhanced where these rights do exist in legal theory, and where constitutional rights have often been recognised in fact in the past.'¹³

Britain's unwritten constitution has in the past prevented its citizens from conducting a legal battle in the British courts similar to those undertaken by the civil rights activists in the US, though many cases have been successfully pursued at the European Court of Human Rights - a point I return to later. However, the incorporation of the European Convention of Human Rights into British law under the Bill of Rights Act of 2001 has opened the way for legislation which appears oppressive to be challenged in the British courts. Moreover, Britain, like all UN member states has incurred legal as well as moral obligations under the terms of the UN Charter, and additional obligations as a member of the European Community and a signatory of the Helsinki Accords of 1975. Thus successive governments have in effect acknowledged Parliament's right to pass legislation is not unbounded. The laws must fall within certain parameters if they are to be regarded not only as morally acceptable but as legally valid and binding.

At a quite different level, the validity of bye-laws in Britain can be challenged in the courts. Bye-laws are a form of subsidiary legislation and are invalid if they go beyond the powers of an enabling Act of

Parliament - in technical language they are *ultra vires* the Act. Direct actionists who defy these bye-laws are then legally in a position somewhat analogous - though not identical - to that of civil rights protesters in the US who defied the Jim Crow laws of the Southern States.

Since the mid 1980s direct actionists in Britain demonstrating in and around military bases have won a series of significant victories in the courts which have ruled in favour of their contention that Ministry of Defence bye-laws were unlawful. Upholding an appeal by three protesters, John Bugg, Rachel Greaves and Lindis Percy in the Divisional Court in 1992, Lord Justice Woolf criticised the standards adopted by the Ministry of Defence in respect of bye-laws and enunciated a crucial general principle when he stated: 'No citizen is required to comply with a law which is bad on its face.'¹⁴ In September 1997, two women, Helen John and Anne Lee, won another important test case in the Appeal Court against their conviction for trespass in 1996 at the US intelligence surveillance station at Menwith Hill in West Yorkshire.¹⁵

The conclusion, then, is that it would not only be a mistake but positively dangerous to rule out absolutely on constitutional grounds any resort to obstructive direct action or civil disobedience within liberal democracies. Whilst it is important to recognise the risks of habitually or casually engaging in such action, it is no less important to acknowledge that nonviolent direct action and civil disobedience have a vital function in a number of situations. They may in fact be the only alternative to riots and even civil war when fundamental issues divide a society - and, as noted earlier, they may be a way of redressing a balance in favour of the ordinary citizen as against giant corporations and other vested interests.

Direct Action against Defence and Foreign Policies

The case for citizens refusing to comply with unjust domestic laws and policies, or nonviolently obstructing their implementation, is compelling. What then is the argument for civil disobedience against violations, or threatened violations, of the rights of people in other countries? The question can again be approached in terms of how democracy should be defined, or, alternatively, of the extent and limits of national sovereignty. Ultimately the two approaches coincide.

Taking the first approach, the argument is that democracy needs to be defined in a way that includes an obligation to respect the fundamental human rights of people everywhere, not just those who reside within one's own jurisdiction. This would imply that wars of aggression, or acts of genocide, or indeed supplying weapons to regimes involved in external aggression or internal repression, would by definition be undemocratic. And again, the citizens of a country where such policies were being pursued would have a right, indeed a duty, to resist and, if necessary and appropriate, to resort to

direct action and civil disobedience, to bring them to a halt. They could not be accused of being undemocratic in doing so even if they, and the constituency they represented, were a minority of the population.¹⁶

To take some historical examples, Anti-Vietnam war protesters in the US in the 1960s and 1970s were not undermining democracy by taking direct action, but obstructing an act of aggression which ran counter to the whole democratic ideal. The same is true of French citizens in the 1960s who sat down on railway tracks to halt trains taking conscripts to fight a colonial war in Algeria. The case put forward in the 1950s and early 1960s by the Direct Action Committee Against Nuclear War (DACANW) and the Committee of 100 was that they were justified in resorting to civil disobedience because the use of nuclear weapons would be an unprecedented act of mass murder which it was the duty of citizens to oppose - and to oppose in time before a war actually started.¹⁷

Approaching the issue from the other angle, the limits of sovereign rights, we can note that the effect of a growing body of international law has precisely been to redefine and delimit the notion of sovereignty - and thus by implication, the rights of governments, however representative, in their dealing with other states and even with their own citizens. All member states of the UN are under a legal obligation to avoid acts of aggression and genocide and, in the field of human rights, are bound by the terms of the Universal Declaration on Human Rights adopted unanimously in 1948. Member states of the European Community have also contracted further obligations under the European Convention of Human Rights.¹⁸

The mechanisms for the legal enforcement of these obligations are still weak. Even so, the fact that a state has signed up to them can provide the citizens with an important leverage. In the 1970s and 1980s opponents of the communist regimes in Eastern Europe used to good effect the undertakings of their governments in the field of human rights under the terms of the 1975 Helsinki Accords. The leverage could work from the other direction, providing the international community in some situations with a means of putting pressure on recalcitrant governments. Thus where the UN convicted a state of armed aggression this could be accompanied by a statement releasing members of that state's armed forces from their allegiance, and urging its citizens to resist in so far as it was in their power to do so. (True, it is highly unlikely, in the foreseeable future, that an inter-governmental body like the UN, many of whose member states have a far from blameless record, would issue such a declaration. However, prestigious human rights organisations and other international non-governmental organisations could give a lead in this respect).

There is a certain parallel here between the duty of 'sovereign' states to live up to international obligations and the duty of constituent states in a federal system like that of the USA to abide by the

rules of the Federal Constitution. Interestingly, just as the civil rights protesters in the US were able to use the courts in conjunction with direct action in pressing their claims, so direct actionists in Britain have increasingly in recent years cited international law as a legal defence of their actions and achieved some remarkable successes. Their defence in law was strengthened by an advisory judgement of the International Court of Justice in 1996 on the legality of nuclear weapons, so it makes sense to look first at this.

The issue came before the ICJ as a result of years of work by the World Court Project, an initiative supported by various international peace and disarmament organisations including the International Association of Lawyers Against Nuclear Arms, the International Peace Bureau and the International Physicians for the Prevention of Nuclear War. The problem they faced was that as nongovernmental organisations they had no direct access to the Court. However, they successfully petitioned the World Health Organisation and the UN General Assembly to request an advisory judgement which was duly given in July 1996. In it, the Court stated that, with one possible exception, the threat or use of nuclear weapons, - though not their deployment per se - would be 'contrary to the rules of international law applicable in armed conflict'. The exception was stated in the following terms: '... in view of the current state of international law, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake'. While this exception weakened the force of the judgement it by no means invalidated it. It placed a burden of proof on states threatening or using nuclear weapons to show that the survival of the state was at issue, and it left open the question as to whether even in these extreme circumstances the use of threat of using nuclear weapons would be lawful.

The ICJ judgement has figured prominently in the legal defence put forward by participants in the Trident Ploughshares 2000 project who faced trial for acts of 'direct disarmament' against Britain's Trident nuclear forces. This project was initiated in 1998 by Angie Zelter who had earlier (1996) been acquitted with three other women, Lotta Kronlid, Andrew Needham and Joanna Wilson, at Liverpool Crown Court of causing criminal damage to a Hawk fighter-bomber plane bound for Indonesia. The women, all members of the 'Seeds of Hope' Ploughshares project, freely admitted to 'disarming' the plane with household hammers, but argued that as aircraft of this type were being used by Indonesia in a war of genocide in East Timor they were entitled to act as they did to prevent a still greater crime. The judge left the issue for the jury to decide, and they unanimously acquitted the four women.

The Trident Ploughshares 2000 project was modelled on that of the Seeds of Hope action - and the latter in turn was influenced by the broader Ploughshares movement which began in the United States in the late 1960s. Drawing its inspiration from the biblical injunction to beat swords into ploughshares,

it was initially linked to the radical Catholic Worker movement in the US, but was subsequently taken up by other anti-militarist groups, including purely secular ones and took on an international character. In keeping with the Ploughshares tradition, participants in Trident Ploughshares 2000 pledged themselves to carrying out acts of direct disarmament on Britain's Trident nuclear forces and support systems with the stated objective of achieving complete British nuclear disarmament by the year 2000. Two cardinal principles of the action were nonviolence and accountability. The commitment to nonviolence meant that although there would be controlled physical damage to the weapons systems, no violence would ever be used against persons. The commitment to accountability meant that those carrying out the action would acknowledge their role and be prepared if necessary to face trial and imprisonment - just as the Seeds of Hope women had done. Some actions would be publicly announced in advance and therefore would have little chance of causing any damage to the weapons; others would be planned and carried out clandestinely though with the participants remaining on site after the action and identifying themselves.

The scrapping of Trident by 1 January 2000 has obviously not occurred, but the project continues under the title Trident Ploughshares and has proved one of the most dynamic and successful peace movement initiatives of recent years. The extent of direct disarmament, as one would expect, has not been sufficient to dent the government's capacity to wage nuclear war, but the court cases have highlighted the issue and the open demonstrations have attracted increasing numbers - for example, some 700 people took part in a blockade of the Faslane Trident base in February 2001, 350 of whom were arrested, including the Labour MP George Galloway, the Socialist MSP, Tommy Sheridan, and the Green MEP, Caroline Lucas. Statements of support have come from a wide range of people, and the degree of public unease about Trident has been reflected in some remarkable successes in the courts.

The first of these occurred in October 1999 when the Sheriff of Greenock Court, Margaret Gimblett, directed the jury to bring in a Not Guilty verdict against three women, Angie Zelter, Ulla Roder and Ellen Moxley, charged with criminal damage for a disarmament action on a Trident nuclear research barge. The defendants had relied in part on the ICJ ruling in claiming that the threat or use of nuclear weapons was illegal, and that the damage they had caused was justified to prevent a greater crime. Amongst those giving evidence at the trial was Francis Boyle, Professor of International Law at the University of Illinois, who argued forcefully that Trident was illegal. Sheriff Gimblett, accepted the international law evidence - noting that the Crown had made no effort to rebut it - and ruled that as there was no criminal intent on the part of the three women, the judge should acquit them.

A week later, Scotland's chief law officer, the Lord Advocate, Lord Hardie, announced he was seeking clarification at the High Court of Justiciary in Edinburgh on points of law raised by the case,

and in April 2001, the Court found in his favour. Answering questions raised by him, the judges ruled that in a trial under Scottish criminal procedure evidence could not be led as to the contents of customary international law as it applied to the UK, that no rule under customary international law would justify a private individual damaging or destroying property, that the belief of an accused person that his or her actions were justified did not amount to a defence to a charge of malicious mischief or theft, and that it was not a general defence to a criminal charge that the offence was committed in order to prevent or bring to an end the commission of an offence by another. This judgement, however, is unlikely to turn out to be the final word on the issue or to close down the legal and moral debate. Nor has it deterred further direct action against Trident in Scotland or other parts of the UK.

In the English courts there have been several instances in which juries have shown a reluctance to convict in Trident Ploughshares cases. In September 2000, the jury at Manchester Crown Court found two women, Rachel Wenham and Rosie James, not guilty of criminal damage for spray painting slogans on the Trident submarine HMS Vengeance at Barrow in Furness, but failed to reach a verdict on a second identical charge related to the damaging of equipment on the submarine. They were re-tried approximately one year later at the same court, but again the jury was unable to agree, and the prosecution decided not to pursue the case further. Meanwhile in January 2001, again at Manchester Crown Court, two other Trident Ploughshares campaigners, Sylvia Boyes and River, were found not guilty of conspiracy to commit criminal damage to HMS Vengeance despite their attempt to board and 'disarm' the vessel.

By October 2001, the total number of arrests for Trident Ploughshares actions amounted to 1,350, with 171 trials. Protesters had spent a total of 1,351 days in prison and faced fines totalling £22,554. In the same month it was announced that Trident Ploughshares was one of the four winners for 2001 of the prestigious Right Livelihood Awards given annually by the Swedish parliament to 'honour and support those offering practical and exemplary answers to the most urgent challenges facing us today.' The award will be received by the three women campaigners acquitted at Greenock Sheriff's court in October 1999, Angie Zelter, Ulla Roder, and Ellen Moxley.¹⁹

It is important, however, to re-iterate that the justification for direct action and civil disobedience in democratic states does not depend on the laws or policies being ruled illegal by a national or international court - whether because they are unconstitutional, or *ultra vires* an enabling Act, or in breach of international law. The argument for civil disobedience is moral and political, not legal. Particular laws or policies may be wholly irresponsible, even criminal in a moral sense - causing, for instance, irreversible damage to the environment - without necessarily violating national constitutions or international law. It strengthens the argument of civil resisters, and their legal position, if they can show that the laws or policies they object to are themselves unconstitutional or in breach of

international law. But their case does not depend on demonstrating this. The US civil rights protesters would have continued their campaign, and would have been right to do so, if the US Supreme Court had found against them on the issue of segregation.²⁰ Similarly the ambiguities of the International Court judgement on the legality of nuclear weapons does not invalidate the case for taking direct action against their manufacture, deployment or use, any more than does the ruling of the Scottish High Court ruling out a defence based on international law for taking nonviolent direct action to incapacitate weapons of mass destruction.

Criteria for Evaluating the Merits of Direct Action and Civil

Disobedience

What criteria can be used in judging the merits of particular campaigns of direct action or civil disobedience? This is an issue which has been much debated, particularly in a number of US publications in and around the period of the Civil Rights struggle and the anti-Vietnam war agitation. In revisiting the topic, I have been struck by the parallels with classical Just War theory. As with the principles of a Just War, direct action/civil disobedience should be an instrument of last rather than first resort. The criteria too, as in Just War theory, fall into two categories: the cause for which action is taken; and the methods employed.

Regarding Aims, first, the cause must be a just one. The Civil Rights campaigns in the US, and the subsequent civil rights movement against religious discrimination in Northern Ireland being clear examples. The obvious difficulty here is that the judgement of what constitutes a just cause is bound to be subjective to some degree. But this qualification - 'to some degree' - is crucial. At one end of the scale there are moral judgements which are so universally accepted across different creeds and cultures that they have achieved a virtual objective status. No-one today seriously puts forward a moral defence of genocide, the deliberate massacre of civilians²¹ the persecution of people on the basis of gender, race or religion - and the proscriptions against such practices are embodied in many of the international laws and agreements mentioned earlier.

At the other end of the scale there are campaigns based on highly subjective, even idiosyncratic judgements. This does not mean they are necessarily mistaken, indeed such judgements sometimes mark the growth point of a new moral sensitivity, for instance in relation to the treatment of animals or the protection of the environment. However, if they do embody ideas which are in that sense ahead of their time, this has implications for strategy, and even for what is justified in the way of direct action. The minimum requirement, however, is that the protesters themselves should be genuinely convinced of their case and be willing to support it publicly with rational argument. They will then at

least be doing what is right for them and raising the question in a dramatic fashion for the rest of society.

Second, the issue should be a serious one, involving a major issue of rights or justice, or the protection of the environment. On tactical grounds alone this makes sense because if people rush in to defy every piece of legislation they consider in the least degree unfair, or to obstruct the implementation of every government policy they find objectionable, the method will be devalued - not to mention the fact that the protesters will soon burn themselves out. But there is a more serious reason for restraint which relates to the earlier discussion of the element of subjectivity in moral judgements. The debate surrounding legislation and government policies, and the laws and policies themselves, constitute an integral part of the process of establishing or redefining the moral and political consensus on particular issues. The democratic compromise, so to speak, involves a willingness to comply with the laws, and to avoid physically obstructing agreed government policies, unless there are strong and pressing reasons to do otherwise. In short, not all moral issues are so clear cut, or so serious in their consequences, as to justify stepping outside the agreed political process and legal framework of a democratic system.

Two other important criteria are the degree of urgency, and the likelihood or otherwise of policy changes being possible - and possible in time - through the normal constitutional process. Urgency strengthens the case for direct action, as does the judgement that the more usual campaigning methods and constitutional process are unlikely to be adequate. A further implication of the last point is that collective direct action and civil disobedience must be judged to have some reasonable prospect of success, and be part of a coherent strategy for change. This would apply less strongly, or perhaps not at all, to individual or small-group actions where the intention is to bear prophetic witness to certain values in the hope that it will find an echo in the hearts and minds of others and perhaps bear political fruit at some distant date. Finally, constitutional means should normally have been pursued before a campaign of direct action is embarked upon, and should continue to be pursued in parallel with it. I say, normally, because there could be critical situations in which mass direct action would be right and necessary even in the absence of a prior constitutional campaign.

Regarding Methods, first, civil disobedience by definition implies a commitment to nonviolent forms of protest - which is not to say that practitioners of civil disobedience necessarily reject the use of violence in all circumstances. Whether violent direct action is ever justified in a democracy is a separate discussion. In wholly exceptional circumstances I think it could be - for instance if an ethnic minority faced systematic violent attack by the forces of the state it would have the right to use the necessary minimum force to defend itself. The basic human right of self-defence is not nullified just because the assailant is a member of the police or armed forces. However, assuming that some kind

of constitutional and legal framework still existed in that situation, it might still be more prudent and effective to resort to other nonviolent forms of resistance. Resort to organised violence is a very drastic step indeed and to be avoided at almost all costs because of the likely consequences for the democratic system and the risk of igniting civil war. Nonviolent direct action and civil disobedience has the advantage of presenting a radical challenge while not slamming the door on rational debate or inflaming passions to the point where debate becomes virtually impossible.

There is a narrower point as to whether in the course of a campaign of nonviolent action, protesters are ever justified in using violence, or some degree of force, in self-defence. Again, while stressing the strategic, tactical and moral argument for maintaining a strict nonviolent discipline, I would not want to rule out as unjustified any use of force, however limited, to restrain an assailant in an otherwise nonviolent action. For example, if a security guard was actually endangering the life of a prostrate demonstrator by kicking and punching him or her, fellow demonstrators would be entitled to intervene and use the minimum necessary restraint to end the assault.

Finally there is an argument about whether nonviolence should extend to property as well as persons. On the whole I think it should if only because the public impact of demonstrations changes radically once property comes under attack. Symbolism is crucial in such actions, and the symbolic message carried by attacks on property is likely to be that physical force, not moral and political pressure, is what ultimately counts. Attacks on property can also change the whole atmosphere during the action itself and lead to violent confrontations between demonstrators and police or security guards.

Having said that, the carefully planned and tightly controlled acts of ‘direct disarmament’ of the Trident Ploughshares movement - in the US, Britain, and other countries - have succeeded in putting across a clear and nonviolent message.²² Certainly the Seeds of Hope action at Warton in Lancashire in 1996, mentioned earlier, stirred up a public debate about the issue of arms sales to Indonesia. Similarly the Trident Ploughshares 2000 project has attracted support and re-ignited the debate about the morality and legality of nuclear weapons. Part of the argument of the Ploughshares movement is that since weapons of mass destruction are immoral, and arguably illegal under international law, they have no business, so to speak, to exist and should not be treated as legitimate property to be protected. The danger with that argument is that it could be used in support of a violent and dangerous campaign of sabotage whose symbolic significance and political impact would be entirely different from the disciplined nonviolent action of the Ploughshares movement. And it is the symbolism and political impact, in my view, that is crucial. Any idea that nuclear disarmament in Britain could, in practice, be achieved by the thousands of people dismantling the weapons is an illusion.

Two further principles which are central to the notion of the just conduct of war are less crucial for direct action and civil disobedience but nevertheless do have some bearing upon them, namely discrimination and proportionality. In Just War theory, the principle of discrimination prohibits any direct, intentional attack on civilians, but does countenance attacks on military targets even where this involves, or is likely to involve some civilian casualties. The principle of proportionality means that there must be a relationship, even if it cannot be precisely defined, between the importance of the military aim and the likely scale of civilian casualties. These principles are less crucial for nonviolent direct action and civil disobedience because they do not normally involve inflicting physical injury, much less death, on anyone. Normally the worst that happens is that some people suffer some hardship and inconvenience. Nonetheless even deliberately blocking the flow of traffic is infringing people's freedom of movement, and this can have more serious consequences when emergency services are held up. Political strikes, too, could result in ordinary members of the public being deprived of essential supplies. It is important therefore that direct action and civil disobedience should be as precisely targeted as possible. Blocking a nuclear base by a sit-down is a justified means of protesting against reliance on weapons of mass destruction, even if this affects traffic on a nearby public highway to some extent. Bringing all traffic to a halt in a city centre is much harder to justify, and much more dubious as a campaigning strategy.

Finally there is, at the least, a strong presumption in favour of openness and accountability in civil disobedience campaigns. This has to do with the concept of civil disobedience as a public act, and, unlike warfare, essentially an act of communication rather than of attempted coercion. For some commentators and practitioners, indeed, openness and accountability are absolute requirements. But while it is crucial for civil disobedience to retain its characteristic of open public defiance - in contrast to other forms of resistance - there is room for debate about how broadly openness and accountability are to be interpreted.

With regard to openness, Gandhi's practice was to inform the authorities in advance of the resisters' plans. In a more repressive situation, this would not be possible if there was to be any chance of the planned action taking place at all. Essentially, this is a question of how one chooses to define civil disobedience. Does one, for instance, define it so as to include the action of religious and other groups in the US in the 1980s who provided an underground network to assist refugees fleeing persecution and terror in various Central American states? Their detailed plans had to remain secret, but some groups at least did publicly acknowledge and justify their involvement in it. One way of approaching the issue would be to say that this was an example of justified nonviolent direct action but not of civil disobedience in the stricter definition of the term. The same could be said of the clandestine evacuation of 95% of the Jewish population from Denmark in 1943 to the safety of neutral Sweden.

Alternatively, one can accept a rather broader definition of civil disobedience to include cases of this kind.

There is some latitude also in regards to the interpretation of the principle of accountability. Gandhi interpreted it as implying that the protester should demonstrate his acceptance of the rule of law by willingly submitting to arrest and trial, and accepting without complaint whatever penalty the court chose to impose. His practice was to plead guilty to the charge whilst justifying his action in moral terms. Some commentators have insisted that it is an integral part of the whole notion of civil disobedience.²³

Howard Zinn, the American radical historian, responding in 1968 to a thesis by a US Supreme Court judge, Abe Fortas, forcefully rejects this approach. ‘Why,’ he asks, ‘must the citizen “accept the result” of a decision he considers immoral? To support “the rule of law” in the abstract?’ We have just argued that to support the wrong rule of law does not automatically strengthen the right rule of law.²⁴ Fortas had praised Martin Luther King for accepting imprisonment ‘without complaint or histrionics’ for defying a state court injunction in Alabama forbidding him, in effect, from exercising his right of assembly. (The Supreme Court in this instance upheld the decision of the Alabama court at a subsequent appeal). ‘But why was it right,’ Zinn asks, ‘for Dr King to accept an unjust verdict, corroborating an unjust injunction, resulting in an unjust jail sentence?’²⁵

Zinn, I think is right, that the injustice itself in such a clear-cut case should not be accepted without protest. But beyond that, what should King have done? Would the civil rights cause have been enhanced in any sense, for example, if he had resisted arrest or gone on the run? This is essentially an issue of strategy and tactics, though these in turn depend on judgements about the moral and psychological impact of the course of action chosen. Certainly there is no *moral imperative* to accept the legal consequences of disobeying blatantly unjust laws²⁶ – the apartheid laws in South Africa for example while these were in force. But there remains, nonetheless, a strong case for doing so as a way of proclaiming that one accepts in principle the rule of law and that one is prepared to live by the democratic compromise of abiding by the rules even when where they are sometimes less than perfectly just – unless and until one reaches the conclusion that the system is so unjust that the claim that it is democratic amounts to a sham. True, this commitment might be signalled in other ways such as people's willingness to pay taxes and their overall record of law abidance,²⁷ but these do not convey the message with the same unambiguous force in the particular context in which one has openly defied the law. For this reason, and as a way of reinforcing the message that one is engaged in an open public act of defiance, the presumption, in my judgement, should be in favour of a willingness to accept the legal consequences of engaging in civil disobedience campaigns. A further argument for doing so is that if protesters engaged in acts of civil disobedience are encouraged to resist or evade arrest, the

whole character of the action would be likely to change. Nevertheless, there can be circumstances in which it would be right to try to avoid arrest and trial, or to take civil disobedience a stage further by refusing to co-operate with the court procedures or the prison regime. This would apply, for example, where the law in question was outrageously unjust and the penalties prescribed under it evidently vindictive.

There is something of a parallel between a decision to accept the legal consequences of acts of civil disobedience and the decision to maintain a nonviolent discipline, even in the face of assaults by the police or security guards. Neither decision springs from a moral obligation. Both relate to a judgement of the likely public impact of acting in a particular way, or of the moral principles accepted by those participating in the action.

However, a decision to accept 'the legal consequences of one's act' does not necessarily imply pleading guilty to a charge, even where the charge is an appropriate one. Clearly where there is a valid defence in law, to make use of it in no way implies general contempt for the law. The difficulty, rather, is to say in what sense one has engaged in civil disobedience if one is claiming that the action was *legally* justified. But, as the earlier discussion of this point suggested, the contradiction is not an absolute one. It is possible to defy a law which is in place and being enforced in the immediate jurisdiction whilst claiming that its status, legally as well as morally, is questionable. Similarly, the defence of Necessity in English law ²⁸ presupposes, paradoxically, both that the law has been in a literal sense disobeyed or defied and that the circumstances provided a justification *in law* for doing so.

Pleading not guilty can provide the protester with the opportunity to make his or her wider argument, and in a sense to put the authorities in the dock by showing how the laws or policies contravene accepted moral and legal norms. Magistrates and judges tend to give such arguments short shrift, though this is not always the case. Juries are somewhat more likely to pay attention to them if the defendant in a Crown Court case is allowed to present them, or smuggles them in anyway against the ruling of the judge. And on the rare occasions when the civil disobedient defendant admits the facts but nonetheless obtains an acquittal on the basis of a moral/legal argument, as in the Seeds of Hope case, the moral victory is considerable - as is the corresponding embarrassment of the authorities. My impression is that there has been a shift in Britain between the practice of the peace movement campaigns of the late 1950s and early 1960s and that of the 1980s or of the present day. Whereas in the earlier period people tended to follow the Gandhian practice of pleading guilty and stating their moral reasons for breaking the law, the later practice has been rather to plead Not Guilty and argue some kind of necessity defence. The main pitfall to be avoided when adopting this approach is to get so immersed in legal technicalities that the main moral and political case gets lost to view.

Leverage or Coercion?

What the above discussion of constraints on the legitimate use of direct action and civil disobedience demonstrates, I think, is that one cannot lay down a single set of hard and fast rules that apply to every type and instance of their use. Three general observations here.

First, the constraints that need to be observed within a democracy on defensive civil disobedience - where individuals are resisting the state at the point at which it places what they regard as unwarranted restrictions on their actions or makes unacceptable demands upon them - are much less strong than those which apply when people come together to obstruct the activities of others implementing government policies or at least acting within the law.

Second, the constraints on small-scale, essentially symbolic, actions, are less strong than on mass direct action and civil disobedience, or mass political strikes, where the element of coercion is greater. Some commentators accept individual or small-scale direct action as a valid extension of constitutional methods and that it is the imaginative appropriateness of the symbolic act of resistance, coupled with the willingness of the protesters to face hardship, arrest, and imprisonment that exercises the real leverage, not the physical obstruction as such. Its power is affective rather than coercive and for this reason it poses no serious threat to the normal democratic process.

Third, the graver the issue, and the more urgent the crisis, the stronger is the case for 'coercive' direct action. Thus when it became clear over the summer and autumn of 1956 that the British government, in collusion with France and Israel, was about to embark on an aggressive war against Egypt over Suez, mass civil disobedience and direct action - and the staging of a general strike if that had been a political possibility - would, in my judgement, have been entirely justified. (Even as it was, the government were unnerved by the scale of protests that did occur). Similarly mass direct action, like the 'Confrontation with the Warmakers' at the Pentagon in October 1967, was justified to try to halt the US aggression in Vietnam and the subsequent invasion and indiscriminate bombing of Cambodia in 1970.

Mass protest in such a crisis situation - assuming it can be mounted - is also more likely to rattle the authorities and thus to be more effective than in less critical situations. A government may be bounced out of proceeding with a rash military adventure by huge and immediate protests where it would far less likely to be deflected from some more settled policy, such as relying on nuclear weapons for national defence, or the 'protection' of the US nuclear umbrella. However, the mass civil disobedience campaign by the Committee of 100 in the early 1960s was fully justified, in my view,

because of the unprecedented disaster that a nuclear war would represent, the fraught international situation at that time, and the fact that if one was to have any chance of success, action had to be taken before the war began. The pan-European direct action and civil disobedience in the early 1980s directed against the deployment of cruise and Pershing II missiles - including notably the sustained action by women at Greenham Common - was justified on the same grounds.

But while acknowledging that there is a coercive element in mass direct action and civil disobedience, I question whether the essential dynamics are that different from smaller scale direct action. Except perhaps in a truly revolutionary situation, mass direct action also works essentially at a symbolic and political level. Only rarely can a democratically elected government be literally coerced by nonviolent mass action into changing a policy it is committed to. The reality is that the authorities have the edge in purely physical force and cannot be defeated on that ground through nonviolent action. With direct action demonstrations, what is important is to create an imaginative drama capable of engaging public sympathy, which at the same time faces the authorities with a dilemma about the level and type of force to use. Numbers can be important here not only because they usually affect the amount of media coverage but because they heighten the dilemma of the authorities. If the latter use massive force they may alienate public opinion and lose credibility; if they take no action at all, progress on the project concerned will be halted, or operations within an existing base or factory disrupted. More important still, their authority is put on the line.

However, the argument about public reaction cuts both ways. The protesters too can lose credibility and public sympathy if their actions suggest they are impervious to reasoned argument, are prepared to trash and destroy, and perhaps even to put the lives of their opponents at risk. If this happens, not only will the protests themselves lose much of their impact, the authorities will also be less constrained in taking forceful action against those involved. In this sense the battleground remains on the moral, psychological, and political plane. In the anti-roads and anti-airport demonstrations, dating mainly from the 1990s, the ingenuity, wit, and sheer courage of the demonstrators have won them much public support and forced politicians and the wider society to re-examine the issues that could have induced so many people, the young especially, but also the middle-aged and elderly, and people from a wide spectrum of the community to take such risks and endure such hardships. The very fact that direct action demonstrations have a greater impact - as I think they clearly do - when they involve people from a wide cross-section of society indicates that something other than straightforward coercion or the weight of numbers is at work here.

Usually where nonviolent direct action is successful, this is not because it has literally coerced the elected government but because it has levered it into changing its policy through moral and political pressure. Thus, if the country is deeply divided, if perhaps the government, and governing party is not

of one mind, or lacks conviction in its policies, it may find it politic to retreat. Alternatively a new government taking office will think long and hard about continuing with the policy of its predecessor. This has probably happened to some extent with the anti-roads protests in Britain in the 1990s which did not stop any one road from being built through direct obstruction but has had a cumulative impact on public opinion, including opinion within the political parties. The shift in opinion was no doubt a factor behind the decision of the Labour government which took office in May 1997 to review the whole road building programme and transport policy. In this case direct action and civil disobedience, far from undermining democracy, gave it substance and depth by engaging politicians, political commentators and the wider public in a debate which would not otherwise have occurred.

The two instances in Britain post World War II where civil disobedience did, to some extent, force the hand of the government, were of a very different kind from the mass sit-downs, occupations and invasions that critics most frequently point to as being coercive and therefore undemocratic. These were the Ulster Workers Council strike of 1974, and the anti poll-tax campaign starting in Scotland in 1989 and extending to England and Wales the following year. The former brought down the power-sharing Executive in Northern Ireland formed by the Province's elected representatives on the initiative of the then Labour government in London. It shows how strike action by a determined and powerfully-placed section of the community - in particular, in this instance, the power workers - can thwart the decisions arrived at by elected politicians. Perhaps, however, the success of the strike also indicates that the time was not ripe for this experiment in power sharing and that not enough had been done to engage the Protestant working class in the process of political change. Certainly the outcome of the strike was not all negative in that it threw up some new leaders with roots in working class communities who have, in some cases, proved more open minded than the mainstream politicians. It should also be noted that even here a sufficiently determined government, willing to bring in the army to run the power stations and secure essential supplies, might have broken the strike. The Labour government's decision not to attempt that may be regarded either as a lamentable failure of nerve or as a prudent political decision depending on one's viewpoint; but the point is they could have taken stronger measures and on political grounds decided against doing so.

The anti poll-tax campaign was different again. Although there were several large scale demonstrations and serious efforts to secure a mass defiance of the tax, it was in the end the individual refusal of hundreds of thousands of people which made the tax unworkable and forced the government's volte-face - sealing also the political fate of Mrs Thatcher. Here again the dynamics are instructive. Because it was a dispersed action, it affected every city, town, and community, with court cases generating regular publicity. The press and media coverage, especially at local level, tended to be sympathetic, there was widespread unease about the justice of the tax, and the government, if it was not divided at the start, became so in face of public opposition. In the end it had

to decide whether to risk alienating a broad section of the population, including many of its own supporters, or change tack. With an election looming, it chose the latter course.

Conclusion

To sum up then, the resort to obstructive direct action and civil disobedience carries certain risks, such as an incitement to more general lawlessness, encouraging other individuals and groups to resort to violent direct action, or provoking the government into introducing draconian repressive measures. Where constitutional democracy is weak, widespread disruption by a determined and well organised political movement can even lead, or contribute, to the collapse of democratic government altogether.

But if certain constraints are observed, such risks can be minimised if not altogether eliminated. In any case, the proposition that civil disobedience should be altogether eschewed in a constitutional democracy carries its own, far graver, dangers. A democratically elected government, like any other government, has an obligation to respect the fundamental rights of its citizens - and some would add to respect the environment and other creatures who share the planet with us. It has similar obligations in morality, and in terms of a growing body of international law, to respect the rights of populations in other states. Where a government ignores these rights in a sufficiently serious way, such as trampling on the rights of a minority within the country, or engaging in a war of aggression, direct action and civil disobedience is justified.

There can be an element of coercion in direct action/civil disobedience - which is one reason it should be employed with discretion. However, it chiefly operates within the democratic system through the power of drama and symbolism, through appeals to shared values within the society, and through facing the authorities with moral and political dilemmas in deciding how to proceed. Enduring changes in legislation and public policy have to be achieved through the democratic process. But direct action/civil disobedience has an important role to play in that process. It is a mode of dramatic public address, operating outside the law but based ultimately on respect for it and for the very principles that inform and underpin a democratic society.

Notes

¹ For a fuller consideration of the issues discussed here, see April Carter, *Direct Action and Liberal Democracy*, Routledge & Kegan Paul, 1973. I wish to acknowledge my indebtedness to the insights of April Carter in that book and in her other writings on this and related topics. My thanks are due also to Lindsay Hart who asked me to write a chapter on direct action for a proposed collection of essays - which unfortunately was never published - and for drawing my attention to several of the writings I discuss in this paper.

² Howard Clark, *Preparing for Nonviolent Direct Action*, Peace News/CND, London, 1984, p.8.

³ See for instance Carl Cohen, *Civil Disobedience*, Columbia University Press 1971, pp.42-48.

⁴ John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, Mass, 1971, p.367.

⁵ In so far as it is a purely individual, and largely private, act some writers argue that it should not be regarded as civil disobedience at all. It nevertheless raises the issue of the right to principled lawbreaking in a democratic society.

⁶ See Hannah Arendt, *On Revolution*, Penguin 1990 edition, especially pp.260-268. The soviets first emerged during the 1905 revolution in Russia, re-emerged in the February Revolution of 1917. They were subsequently taken over by the Bolsheviks to become organs of authoritarian state power.

⁷ John Rawls, 'The Justification of Civil Disobedience' in H. Bedau, *Civil Disobedience. Theory and Practice*, Pegasus, Indianapolis & New York, 1969, p.254

⁸ I have added 'or polity' to indicate that I do not take for granted that the nation-state will necessarily continue indefinitely to provide the framework for systems of law and (self) government. It is possible, for example, to conceive of a federation of smaller face-to face communities governed by principles of direct democracy and operating within or across existing national boundaries. Anarchist and libertarian thinkers have proposed ideas of this kind, and they are close to Gandhi's conception of India as a federation of semi-autonomous villages. For a stimulating exposition of such ideas, see Murray Bookchin, *The Ecology of Freedom*, Cheshire Books, Palo Alto, 1982.

⁹ An alternative approach would be to say that certain laws or policies are democratic but unjustified, representing an abuse of power by the majority. John Rawls argues the case for liberal constitutionalism with reference to a putative social contract among equals to secure and maintain a just (or nearly just) society. This, he points out, necessarily implies limits on what the majority may do. Where those limits are grossly exceeded civil disobedience may be justified. As he puts it: 'And if in his judgment the enactment of the majority exceed certain bounds of injustice, the citizen may consider civil disobedience. For we are not required to accept the majority's acts unconditionally and to acquiesce in the denial of our and others' liberties; rather we submit our conduct to democratic authority to the extent necessary to share the burden of working a constitutional regime, distorted as it must inevitably be by men's lack of wisdom and the defects of their sense of justice.' - Rawls, 'The Justification of Civil Disobedience' in Bedau, ed, *Civil Disobedience*, Pegasus, Indianapolis, 1969, p.246.

¹⁰ See for example Louis Waldman, 'Civil Rights - Yes: Civil Disobedience - No (A Reply to Dr Martin Luther King)' first published in the *New York State Journal*, XXXVII, August 1965, and reprinted in H. Bedau, *Civil Disobedience*, 1969, pp.106-115. In a key passage Waldman argues: Those who assert rights under the Constitution and the laws made thereunder must abide by that Constitution and the law, if that Constitution is to survive. They cannot say that they will abide by those laws which they think are just and refuse to abide by those laws which they think are unjust.' - p.107.

¹¹ For a discussion of this point, see Carl Cohen, *Civil Disobedience*, Columbia University Press, 1971, the section on 'Civil Disobedience and Legal Justification'. Cohen argues that civil disobedience by its very nature cannot be legally justified, though morally and politically it frequently is so. Regarding conflicts between States' and Federal law he argues: 'As a practical matter, however, one should realize that the legal context of first and most pressing importance to one who deliberately breaks what he believes to be an unjust law is the immediate legal system within which the law is operative. While he may seek or believe himself entitled to ultimate constitutional justification, such a person is, in the immediate framework of law, guilty of some crime as a result of his deliberate act.' - p.101.

¹² April Carter, *op cit*, pp.95-96.

¹³ *Ibid*, p.96.

¹⁴ *Yorkshire Post*, 4 August 1992.

¹⁵ Reported in *The Big Issue in the North*, 15 September 1997, pp.4-5.

¹⁶ As with blatantly unjust domestic legislation, one could say alternatively that such actions by the elected government were democratic (in the narrow sense) but wholly reprehensible, therefore justifying citizens, however few in number, resorting to direct action.

¹⁷ See for instance the Policy Statement of the Direct Action Committee Against Nuclear War published in 1959 - DAC archives, Commonwealth Collection, J.B.Priestley Library, University of Bradford, or the founding statement of the Committee of 100, *Act or Perish*, by Bertrand Russell and Michael Scott. See also 'The case For and Against Non-violent Obstruction', *Peace News*, 19 December 1958, a debate on this question between myself and Allen Skinner.

¹⁸ The moral and legal obligations of states over and above those to their own citizens provide the basis and justification for transnational direct action by peace, human rights and environmental groups. Those who engage in such action are challenging states - or sometimes other corporate bodies - to live up to those wider obligations and at the same time affirming a more inclusive notion of obligation and citizenship on the part of individuals wherever they happen to live. For a discussion of transnational action and its relationship to the concept of global citizenship see April Carter, 'Global Civil Society: Acting as Global Citizens', Chapter 4 of her book *The Political Theory of Global Citizenship*, Routledge, London & New York, 2001.

¹⁹ For more information about Trident Ploughshares, visit its website: <http://www.apc.org/tp2000>. See also *Trident on Trial*, Luath Press, July 2001, price £9.99.

²⁰ Howard Zinn, writing in 1968 at the height of the Vietnam War and the protest movement against it, noted the conservatism of the US Supreme Court and its general unwillingness to declare any piece of Federal Legislation in breach of the First Amendment - the amendment which guarantees freedom of speech and assembly. See Howard Zinn, *Democracy & Disobedience.. Nine Fallacies of Law and Order*, Vintage Books, New York, 1968, pp.68-87.

²¹ This is not quite true, unfortunately, with respect to civilian massacre in wartime where there has been a progressive deterioration in ethical norms. There are still those who defend the carpet bombing of German cities such as Hamburg and Dresden in World War II, and most notoriously of all, the bombing of Hiroshima and Nagasaki in 1945. It is also the case that the nuclear powers contemplate and make concrete preparations for civilian massacre on an unprecedented scale through the use of nuclear weapons in some circumstances.

²² The first Ploughshares action took place in King of Prussia, Pennsylvania, in 1980 when eight people entered the General Electric plant, damaged the nose cones of two Mark 12A nuclear warheads and poured blood on documents. There have been subsequent actions in several other countries, including Britain.

²³ Cohen, 1971, is particularly insistent on this point. See especially his chapter, 'The Punishment of Civil Disobedience', pp.76-91. John Rawls too argues that civil disobedience expresses disobedience to law within the limb of fidelity to the law, and that the latter is expressed by 'the public and nonviolent nature of the act and by the willingness to accept the legal consequences of one's conduct.' - *A Theory of Justice*, p.366. (italics added).

²⁴ Howard Zinn, *Disobedience and Democracy*, p.27.

²⁵ Zinn, 1968, p.29. 26

²⁶ A point argued by Nicholas Buttle in 'Civil Disobedience and Punishment', *Political Studies* (1985), XXXIII, pp.64-56, by Gordon J. Schochet in 'The Morality of Resisting the Penalty' in V. Held, Kai Niclsen and Charles Parsons (eds), *Philosophy and Political Action*, Oxford University Press, New York, London and Toronto, 1972, pp. 649-656.

²⁷ Buttle, 1985, and Schochet, 1972, both make this point.

²⁸ Lord Justice Brown in an Appeal Court judgement in 1989 stated: 'English Law does in extreme circumstances recognize a defence of necessity'. *R. v.Martin, 1989 All ER*, pp.652-654.